

KENTUCKY PERSONNEL BOARD

MINUTES OF

November 17, 2006

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Greg Higgins on November 17, 2006, at approximately 9:30 a.m., 5 Fountain Place, Frankfort, Kentucky.

Board personnel present:

Betty Gibson, Member
Tina Goodmann, Member
Lisa Hendricks, Member
Greg Higgins, Member
Mark A. Sipek, Executive Director and Secretary
Boyce A. Crocker, General Counsel
Linda R. Morris, Administrative Section Supervisor

Swearing in of New Board Members

General Counsel Crocker gave the oath of office to the two new Board members who were appointed by the Governor. They are Betty M. Gibson and Lisa T. Hendricks. The other members and staff welcomed the new members to the Board.

2. ELECTION OF OFFICERS

Executive Director Mark Sipek advised the Board that the next order of business would be to elect officers and opened the floor for nominations. Tina Goodmann moved to elect Greg Higgins as Chairman, Betty Gibson seconded. Mr. Higgins then stated that we needed to designate the term that the Chairman would serve, and suggested an abbreviated six-month term since more new members would be appointed. Mr. Sipek asked for a vote on Mr. Higgins as Chairman for six months and the motion carried 3-0. Mr. Sipek then called for nominations for Vice-Chairman. Mr. Higgins moved that Tina Goodmann be elected Vice-Chairman, Ms. Hendricks seconded and the motion carried 3-0. Chairman Higgins took over the Chairman's seat and asked for patience in his new position.

3. READING OF THE MINUTES OF REGULAR MEETING HELD AUGUST 18, 2006

The minutes of the last Board meeting had been circulated among the members previously. Chairman Higgins asked for additions or corrections. Ms. Goodmann moved to approve the minutes as submitted, Ms. Gibson seconded, and the motion carried 3-0, with Ms. Hendricks abstaining. The Board members signed the minutes.

4. EXECUTIVE DIRECTOR'S REPORT

Mr. Sipek congratulated Ms. Gibson and Ms. Hendricks on their appointments to the Board and welcomed them. He stated due to events that had occurred over the last few months he wished to thank the four Board members who had resigned, Rick Ifland, Timm Hurst, Jack Smith, Jr. and Patrick Moores, for their service on the Board. He stated that they had done good work and were willing to resign in order to resolve some other matters. He said that anyone who looked back on their work would be impressed with it.

Mr. Sipek stated that there had been some personnel changes since the Board last met. Cindy Perkins had been promoted to Administrative Specialist III and we had hired Donnie Hagy as a Legal Secretary II. This brings the staff back to full strength.

Mr. Sipek mentioned that the staff is moving forward with respect to the three major investigations. One is the request from Ann Aukerman. A report had been issued, but there was some additional work being done that should be concluded in the next few weeks. The Doug Doerting investigation is going forward. The investigation called the "Patton Database Investigation" is proceeding as well.

Mr. Sipek stated that there was a proposed change to one of the Board's regulations, 101 KAR 1:325, which sets out longer than six month probationary periods. He stated that agencies requested these changes either making a probationary period longer than six months, or changing longer ones back to six months. The Personnel Cabinet's health insurance regulations are also to be discussed.

Mr. Sipek reported that Mr. Middleton is doing better, but could not be present due to a medical appointment. He is planning to be here in December and we look forward to seeing him then.

5. PERSONNEL CABINET'S REPORT

Tom Stephens, Acting Executive Director of the Office of Legal Services for the Personnel Cabinet, was present on behalf of the Cabinet. He congratulated the new Board members.

Mr. Stephens addressed the health insurance regulations. He stated that the Cabinet was required to provide Summary Plan Descriptions for the health insurance regulation to the Board. He asked that the Board approve the regulation so that it can be taken to the Legislative Research Commission for filing. He stated that the 2007 Summary Plan Descriptions would be presented to the Board shortly.

Chairman Higgins asked Mr. Stephens to address the probationary period changes. Mr. Stephens stated that on an annual basis, the Cabinet sent out "feelers" to the other cabinets to see if there was any desire to change any probationary periods. Mr. Stephens stated that these changes were to positions that are agency-specific and the agency had identified a need for a longer training period.

Ms. Hendricks asked about the Insurance Investigator I and III positions being deleted and Investigator II being left. Ms. Goodmann stated that perhaps the three classes were being collapsed into one. Mr. Stephens stated that this was probably the case, as there was an ongoing effort to cut down on the number of class specifications used by the Commonwealth. Mr. Stephens offered to follow up on this.

6. **PETITIONED POSITION**

A. Special Assistant, Personnel Cabinet, Department for Employee Insurance

Mr. Sipek explained to the new Board members that under KRS 18A.115, there were a set number of non-merit positions. One position can be added by making a request; the second must be approved by the Personnel Cabinet, and if a third is requested, it must be approved by the Board. Mr. Stephens stated that the specific position in question is for an advisor to the Commissioner for the Department of Employee Insurance and will be working on the employee health insurance program. The person in mind has a long background in insurance matters.

Chairman Higgins asked why a merit employee could not fill the position. Mr. Stephens stated that the position in question is a management position that would be directly accountable to the Commissioner.

7. **ORAL ARGUMENTS**

A. James Caudill v. Transportation Cabinet

Present were Hon. Paul Fauri, counsel for the Appellant; and Hon. Robert Roark, counsel for the Appellee, who had requested oral arguments.

B. Nelson Crawford v. Transportation Cabinet

Present were the Appellant, Nelson Crawford, who had requested oral arguments; and Hon. Dana Nickles, counsel for the Appellee.

C. Myron “Dan” Herndon v. Environmental and Public Protection Cabinet and Robin B. Thomerson

Present were the Appellant, Dan Herndon, who had requested oral arguments; and Hon. James R. Dobner, counsel for the Appellee. The parties answered questions from the Board.

D. Patricia Jackson v. Department of Corrections

Present were Hon. Samuel Hayward, counsel for the Appellant, who had requested oral arguments; and Hon. Daniel Egbers, counsel for the Appellee.

E. John McCann v. Transportation Cabinet – (three appeals)

Present were Hon. Paul F. Fauri, counsel for the Appellant, who had requested oral arguments; and Hon. Edwin A. Logan counsel for the Appellee. The parties answered questions from the Board.

F. Marsha Ramey v. Cabinet for Health and Family Services

Present were Hon. Stephen Underwood, counsel for the Appellant; and Hon. Amber Arnett, counsel for the Appellee, who had requested oral arguments.

G. James Travis v. Environmental and Public Protection Cabinet

Present were Hon. Paul F. Fauri, counsel for the Appellant; and Hon. Leesa Moorman, counsel for the Appellee, who had requested oral arguments.

H. Ricky Weaver v. Transportation Cabinet

Present were Hon. Paul F. Fauri, counsel for the Appellant; and Hon. Edwin A. Logan, counsel for the Appellee, who had requested oral arguments. The parties answered questions from the Board.

I. Patrick Whelan v. Transportation Cabinet

Present were the Appellant, Patrick Whelan, who requested oral arguments; and Hon. Dana Nickles, counsel for the Appellee.

This being the end of the oral arguments, Chairman Higgins asked for motions on the health insurance regulation prior to going into closed session, so that the Personnel Cabinet could get the regulation filed today. Ms. Goodmann **moved to approve the health insurance regulation** as proposed. Ms. Gibson seconded and the motion carried 4-0.

8. **CLOSED SESSION**

Ms. Goodmann moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudication; Ms. Hendricks seconded. Chairman Higgins stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1)(c), (f), (j) and (k), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 4-0. (11:25 a.m.)

Ms. Goodmann moved to return to open session, Ms. Gibson seconded, and the motion carried 4-0. (3:00 p.m.)

8. MOTIONS

A. Stuart Reed v. Education Cabinet (Motion to Disqualify Hearing Officer)

Ms. Hendricks moved to reject the Executive Director's Recommended Order and grant the motion of the Education Cabinet disqualifying the Hearing Officer. Ms. Gibson seconded and the motion carried 4-0.

9. CASES TO BE DECIDED

The Board reviewed the following cases. At that time, the Board considered the hearing officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.

A. Rebecca Smith v. Department of Veterans Affairs

Ms. Goodmann moved to defer this matter to the next Board meeting; Ms. Gibson seconded and the motion carried 4-0.

B. Lowell Workman v. Cabinet for Health and Family Services

Ms. Goodmann moved to defer the matter to the next Board meeting; Ms. Hendricks seconded and the motion carried 4-0.

C. James Caudill v. Transportation Cabinet

Ms. Goodmann moved to note Appellee's exceptions, Appellant's response and oral arguments, and to accept the recommended order sustaining the appeal to the extent set forth therein. Ms. Gibson seconded and the motion carried 4-0.

D. Nelson Crawford v. Transportation Cabinet

Ms. Hendricks moved to note the oral argument and to reject the hearing officer's recommended order and remand this case for an evidentiary hearing. Ms. Gibson seconded and the motion carried 4-0.

E. Myron "Dan" Herndon v. Environmental and Public Protection Cabinet and Robin B. Thomserson

Ms. Gibson moved to note Appellant's exceptions, Appellee's response and oral arguments, and to accept the recommended order dismissing the appeal. Ms. Hendricks seconded and the motion carried 4-0.

F. Patricia Jackson v. Department of Corrections

Ms. Goodmann moved to note oral arguments and to accept the recommended order dismissing the appeal. Ms. Hendricks seconded and the motion carried 4-0.

G. John McCann v. Transportation Cabinet (3 appeals)

Ms. Hendricks moved to note Appellant's exceptions, Appellee's response and oral arguments, and to accept the recommended order dismissing the appeals. Ms. Gibson seconded and the motion carried 3-0, with Ms. Goodmann abstaining.

H. Marsha Ramey v. Cabinet for Health and Family Services

Ms. Gibson moved to note Appellant's exceptions, Appellee's response and oral arguments, and to accept the recommended order sustaining the appeal to the extent set forth therein. Ms. Goodmann seconded and the motion carried 4-0.

I. James Travis v. Environmental and Public Protection Cabinet

Ms. Goodmann moved to note Appellee's exceptions, Appellant's response and oral arguments, and to accept the recommended order sustaining the appeal to the extent set forth therein. Ms. Gibson seconded and the motion carried 4-0.

J. Ricky Weaver v. Transportation Cabinet

Ms. Goodmann moved to note Appellee's exceptions, Appellant's response and oral arguments, and to accept the recommended order sustaining the appeal to the extent set forth therein. Ms. Gibson seconded and the motion carried 4-0.

K. Patrick Whelan v. Transportation Cabinet

Ms. Hendricks moved to note Appellant's exceptions, Appellee's response and oral arguments, and to accept the recommended order dismissing the appeal. Ms. Goodmann seconded and the motion carried 4-0.

L. Raymond Bailey v. Department of Corrections

Ms. Goodmann moved to accept the recommended order dismissing the appeal. Ms. Hendricks seconded and the motion carried 4-0.

M. Angela Blevins and Laurie O'Bannion v. Cabinet for Health and Family Services

Ms. Hendricks moved to accept the recommended order dismissing the appeals. Ms. Goodmann seconded and the motion carried 4-0.

N. Ginger Curtis v. Cabinet for Health and Family Services

Ms. Hendricks moved to accept the recommended order dismissing the appeal. Ms. Goodmann seconded and the motion carried 4-0.

O. Lemuel Johnson v. Environmental and Public Protection Cabinet

Ms. Goodmann moved to accept the recommended order sustaining the appeal. Ms. Goodmann seconded and the motion carried 4-0.

P. Gary McIntyre v. Cabinet for Health and Family Services

Ms. Hendricks moved to accept the recommended order dismissing the appeal. Ms. Goodmann seconded and the motion carried 4-0.

Q. Mary McQueen v. Finance and Administration Cabinet

Ms. Goodmann moved to accept the recommended order sustaining the appeal to the extent set forth therein. Ms. Gibson seconded and the motion carried 4-0.

R. Christopher Newsome v. Cabinet for Health and Family Services

Ms. Goodmann moved to accept the recommended order dismissing the appeal. Mr. Higgins seconded and the motion carried 4-0.

S. Gregory Quire v. Transportation Cabinet and Finance and Administration Cabinet

Ms. Hendricks moved to accept the recommended order sustaining the appeal. Ms. Gibson seconded and the motion carried 4-0.

T. Christy Runyon, Andrea Justice and Beverly Scott v. Department of State Police

Ms. Goodmann moved to accept the recommended order dismissing the appeal. Ms. Hendricks seconded and the motion carried 4-0.

U. William Skaggs v. Personnel Cabinet

Ms. Hendricks moved to accept the recommended order dismissing the appeal. Mr. Higgins seconded and the motion carried 4-0.

V. Henry Stenger v. Department of Juvenile Justice

Ms. Goodmann moved to accept the recommended order sustaining the appeal to the extent set forth therein. Ms. Gibson seconded and the motion carried 4-0.

W. Lisa Walker v. Cabinet for Health and Family Services

Ms. Goodmann moved to accept the recommended order dismissing the appeal. Ms. Hendricks seconded and the motion carried 4-0.

X. Michael Wall v. Department of Juvenile Justice

Ms. Goodmann moved to accept the recommended order sustaining the appeal. Ms. Gibson seconded and the motion carried 4-0.

Y. Jonah Young v. Department of Juvenile Justice

Ms. Goodmann moved to accept the recommended order dismissing the appeal. Ms. Hendricks seconded and the motion carried 4-0.

12. Show Cause Orders – No Response Filed

The following cases had show cause orders entered by the hearing officer recommending that the appeals be dismissed for failure to timely prosecute unless affidavits were filed by the Appellants stating sufficient cause to excuse their failure to appear at the scheduled hearing. There were no responses to the show cause orders submitted by the Appellants, except that Mr. Derrick Johnson has submitted a response that was untimely filed.

- A. Matthew Angel v. Personnel Cabinet
- B. Harold Coon v. Transportation Cabinet
- C. Leon Griffith v. Kentucky State Fair Board
- D. Derrick Johnson v. Cabinet for Health and Family Services
- E. Jessica Kimbro v. Department of Corrections
- F. Patricia Middleton v. Environmental and Public Protection Cabinet and Personnel Cabinet
- G. Eva Pryor v. Education Cabinet (2 appeals)
- H. Stephen Rose v. Cabinet for Health & Family Services
- I. Susan Shepherd v. Personnel Cabinet
- J. Vanessa VanHoose v. Personnel Cabinet
- K. Rick Waddle v. Department of Fish and Wildlife Resources
- L. Mona Walker v. Personnel Cabinet
- M. William Wesley, Jr. v. Cabinet for Health and Family Services
- N. Keith White v. Department of Juvenile Justice
- O. LaDawn White v. Personnel Cabinet
- P. Matthew Woolums v. Finance and Administration Cabinet

Ms. Goodmann moved to find that the Appellants had not responded in a timely fashion to the show cause orders and that the recommended orders be accepted dismissing the appeals for failure to timely prosecute the appeals. Ms. Gibson seconded and the motion carried 4-0.

13. **WITHDRAWALS**

Ms. Gibson moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Ms. Hendricks seconded and the motion carried 4-0.

- A. Keith Barker v. Department of Corrections (2 appeals)
- B. Rosetta Bates v. Personnel Cabinet
- C. Susan Blanton v. Cabinet for Health and Family Services
- D. Floyd Buckner v. Commission on Human Rights
- E. Jeffrey Burdine v. Cabinet for Health and Family Services
- F. Marion Carman v. Personnel Cabinet
- G. Patsy Catron v. Personnel Cabinet
- H. Ronald Conatser v. Cabinet for Health and Family Services
- I. Esther Copher v. Personnel Cabinet
- J. Michael Cornwall v. Cabinet for Health and Family Services
- K. Brandi Druen v. Personnel Cabinet
- L. Elizabeth Fraser-Moon v. Personnel Cabinet
- M. Gary Green v. Department of Agriculture
- N. David E. Haley v. Personnel Cabinet
- O. Richard W. Harbison v. Department of Parks
- P. Phoebe Hawkins b. Personnel Cabinet
- Q. Larry Hay v. Department of Juvenile Justice
- R. Jeffery Hemphill v. Personnel Cabinet and Cabinet for Health & Family Services
- S. Debbie Herrman v. Transportation Cabinet
- T. Patty Hughes v. Personnel Cabinet (2 appeals)
- U. Lee Humphrey v. Personnel Cabinet
- V. John Jerrolds v. Personnel Cabinet
- W. Rashann Jones V. Personnel Cabinet (3 appeals)
- X. Donald Kline v. Personnel Cabinet
- Y. Marie Knowlton v. Personnel Cabinet
- Z. Oglauda Lumpkins v. Personnel Cabinet
- AA. Jimmy Luttrell v. Personnel Cabinet
- BB. Sherri Mabe v. Personnel Cabinet
- CC. Janice McConico v. Cabinet for Health and Family Services
- DD. Kristy L. Moore v. Cabinet for Health and Family Services
- EE. Richard Moore v. Department of Corrections (2 appeals)
- FF. Jenia Murray v. Department of Corrections
- GG. Lee Roy Newsome v. Transportation Cabinet
- HH. George Powers v. Department of Corrections
- II. Christian Seidt v. Personnel Cabinet
- JJ. William Shinault v. Personnel Cabinet (2 appeals)
- KK. Christopher Springer v. Cabinet for Health and Family Services
- LL. James Stanley, Jr. v. Personnel Cabinet
- MM. Kimberly Suter v. Transportation Cabinet
- NN. Dana Taylor v. Personnel Cabinet
- OO. Cheryl Thomas v. Cabinet for Health and Family Services
- PP. Michael Tucker v. Personnel Cabinet

- QQ. Karen Vizi v. Personnel Cabinet
- RR. Patrick Whelan v. Transportation Cabinet (2 appeals)
- SS. Melissa Whitaker v. Personnel Cabinet
- TT. LeAnne Wilson v. Personnel Cabinet
- UU. Erin Wolf v. Cabinet for Health and Family Services
- VV. Charles Yonts v. Cabinet for Health and Family Services (2 appeals)
- WW. Darrell Caruso v. Department of Juvenile Justice
- XX. Annette Clausen v. Personnel Cabinet
- YY. Michael Crawford v. Transportation Cabinet
- ZZ. Douglas Holt v. Cabinet for Health and Family Services
- AAA. Jason Lee v. Department of Corrections
- BBB. Sherry Mabe v. Personnel Cabinet
- CCC. Shawn Riley v. Department of Corrections

14. **SETTLEMENTS**

Ms. Goodmann moved to consider the following settlements *en bloc* and to accept the settlements as submitted by the parties sustaining the appeals to the extent set forth in the settlements. Ms. Hendricks seconded and the motion carried 4-0.

- A. Ronriqucco Cunningham v. Cabinet for Health and Family Services
- B. Tina Graves v. Department of Juvenile Justice (2005-400)
- C. William E. Knight v. Department of Veterans Affairs
- D. Annette Logan v. Cabinet for Health and Family Services
- E. George Mercer v. Cabinet for Health and Family Services (2 appeals)
- F. Michael Parker v. Cabinet for Health and Family Services
- G. John Sauter v. Finance and Administration Cabinet (2 appeals)
- H. Rebecca Stamper v. Cabinet for Health and Family Services (2 appeals)
- I. Jackie Stewart v. Cabinet for Health and Family Services
- J. Larry Winchester, James Alexander and Robert Wesley v. Cabinet for Health and Family Services
- K. William Vest v. Department of Juvenile Justice
- L. Carleen Buschmann v. Education Cabinet

12. **OTHER BUSINESS**

- A. Changes to 101 KAR 1:325 (probationary periods)

Ms. Goodmann moved to approve the changes to the regulation as submitted by the Personnel Cabinet. Ms. Gibson seconded and the motion carried 4-0.

- B. Special Assistant, Personnel Cabinet, Department for Employee Insurance

Ms. Goodmann moved to approve the petition of the Personnel Cabinet for a Special Assistant in the Department of Employee Insurance. Mr. Higgins seconded and the motion carried 4-0.

C. Request for Investigation

a. Veterans Affairs

Mr. Sipek stated that the Board had received a letter from a number of Kentucky Department of Veterans Affairs' employees which concerned allegations against Mike Gayhart who had been an administrator. This was accepted as a request for investigation and we contacted the Department and General Beavers. Their attorney, Dennis Shepherd, responded by providing a copy of the complete investigation they had conducted. Mr. Gayhart had voluntarily demoted and moved to another facility. Shortly thereafter, he had resigned. Mr. Sipek stated that he did not recommend any investigation due to the completeness of the investigation by the agency. The gentleman who was complained about no longer works for the agency and there do not appear to be any violations of KRS 18A.

Ms. Gibson moved that the Board not open an investigation into this matter; Ms. Goodmann seconded and the motion carried (4-0).

b. Hiring of Returning Retirees

Mr. Sipek stated that following a discussion with Board members Goodmann and Higgins, there were some concerns that some state agencies either had a policy or at least a practice of not hiring returning retirees. There were some concerns that this practice may not be in accordance with the general provisions of the merit system such as KRS 18A.010, which says that all positions should be filled based on the merit and fitness. If there is a general policy of not employing people who have retired, there is a valuable group of employees who would not be considered. These concerns were placed in writing and sent to the Board. Mr. Sipek believes this is an appropriate matter for the Board to look into to see if there is indeed a practice and what the justification is for it. He did not think it would require a great deal of resources to accomplish this investigation.

Ms. Hendricks asked that if a retired person had more experience wouldn't they automatically get that position. Mr. Sipek said that they certainly would not get it automatically, but that they may be being excluded from even being considered. Chairman Higgins stated that there were statutes that placed certain restrictions on returning retirees, therefor the Legislature had anticipated that some retirees would return to work. He also said that denying them consideration could be a case of age discrimination on its face since anyone retiring would be at least over the age of 40 by virtue of the number of years it would take to acquire retirement status. He thinks this is dangerous territory. He also noted that they did not get to use their seniority. Mr. Sipek corrected that the definition of seniority is months of state service and that would not be excluded. Mr. Crocker said that the employee would start over as regards sick and vacation time and would be a probationary employee, but seniority would be considered. Chairman Higgins stated that he thought more information was needed. Mr. Crocker also said this merited looking into due to the number of state employees who will be retiring by the end of 2008. Ms. Hendricks said if the Board investigated, it needed to look at both sides. The other members agreed.

Chairman Higgins advised the new Board members that if there were any concerns that they had about anything occurring in state government, then they should feel free to bring it to the Board. Mr. Higgins moved to conduct such an investigation; Ms. Goodmann seconded and the motion carried 4-0.

c. Patricia Lewis against KCIW and Department of Parks

Mr. Sipek explained that Ms. Lewis the ex-wife of an employee had stated that her ex-husband was involved in a personal relationship with a female inmate which was ongoing while he was employed at KCIW. She alleges that the relationship continues now as Mr. Lewis is employed at the Department of Park. Her letter was sent to both departments who responded. Mr. Sipek is not sure that Ms. Lewis' letter indicates anything that the Board would have the resources to investigate and he left it to the Board to decide whether it wished to proceed. Mr. Sipek did state that it did not appear to him that these matters had been looked into very carefully. The response from Corrections was essentially that Mr. Lewis no longer worked for them and the response from Parks was that they had looked into it, and were satisfied that Mr. Lewis was not violating any of the internal policies. Ms. Lewis was apparently not happy with the responses from the agencies.

Chairman Higgins asked if based on past investigations, was this the type of complaint that the Board became involved in. Mr. Sipek stated that it was not, that individual complaints of misconduct by an employee are usually a matter for the agency to look into. If there were widespread issues that were not being dealt with by the agency then the Board might become involved. Mr. Crocker stated that this could be referred to the Ethics Commission.

Chairman Higgins asked for a motion. Ms. Goodmann moved to deny the request, but to refer this matter to the Ethics Commission. Ms. Hendricks seconded and the motion carried 4-0.

d. & e. Douglas Ward and Steven Webb against EKCC

Mr. Sipek stated that these men where both inmates at EKCC who were complaining about the conduct of a person who worked for Corrections. Their letters were submitted to the agency, which responded by saying that these were not appropriate matters for the Board to investigate because there were other avenues for the men to pursue. The inmates responded that they had done that. Mr. Sipek stated that these are allegations of misconduct by individual employees and allegations that it was not being dealt with. These are generally not the kind of matters that the Board looks into.

Ms. Goodmann moved to deny the requests for investigation; Mr. Higgins seconded and the motion carried 4-0.

D. Oakwood matters

Mr. Sipek was asked to address the Oakwood matters. He reviewed that this started in the summer of 2006 after receiving a number of appeals involving Oakwood employees. There was a feeling by members that there were issues that went beyond individual appeals that the Board was

receiving. They felt it might be appropriate to have officials from the Cabinet for Health and Family Services or administrators from Oakwood itself to come in and explain some of the policies and practices at the facility in order for the Board to better understand what the facility faces, as well as to have them hear the Board's concerns about some repeated matters that continue to come before the Board. Some of the issues were double shifts, mandatory overtime and what procedures they had for following the merit laws, especially in light of the number of contracted supervisors that were at the facility. Cabinet Secretary Birdwhistle and the administrator of Oakwood were invited to the September board meeting; however, events transpired to cancel the September meeting. Now, the operation at Oakwood has been largely privatized beginning on November 1st. As a result, it is Mr. Sipek's feeling that the matters the Board members were interested in discussing are now moot. The employees are no longer going to be state employees.

Mr. Sipek and Mr. Crocker have met with J.P. Hamm and Mona Womack to discuss some of the transition procedures. The Board has been provided with the materials that Mr. Hamm and Ms. Womack produced. The conclusion was that the employees who were in good standing with Oakwood would be offered employment with Bluegrass, and would also have the option to look for other state jobs. Officials from the Cabinet's personnel office were there to assist employees in seeing what jobs there were. All the employees were to be laid off on November 1st. The information received from the Cabinet showed that at two stages of the process, the employees were given appeal forms, one early in the process and one when they were laid off. Any employees who were laid off would also have re-employment rights.

Mr. Sipek and Mr. Crocker were very impressed with the information from the Cabinet and were convinced that the Cabinet was very interested in working with their employees through this process. At this time, Mr. Sipek is not sure that we need to hear any more on this matter. We have received only a couple of appeals that appear to be related to this process.

Chairman Higgins asked if it was premature to know if any investigation was necessary. Mr. Sipek replied that there had never been a vote to begin an actual investigation, just a request for information. Ms. Goodmann asked if KEAP had been asked to assist in this transition. The staff did not know; it was not mentioned, but it could have been in the packet of information that was given to employees. Ms. Goodmann moved to table any further Oakwood discussion until such time as it is necessary to address any matters. Ms. Gibson seconded and the motion carried 4-0.

Mr. Sipek stated that there was one other matter that needed addressing. Secretary Crall has requested that the provision in KRS 18A.110 which talks about whenever they are proposing a regulations, such as health insurance, they give the Board notice and the board responds. The concern is that the statute says in subsection (6):

... [T]he secretary shall submit the administrative regulation to the board for review.

(a) The board shall review the administration regulation proposed by the secretary not less than twenty (20) days after its submission to it.

(b) Not less than five (5) days after its review, the board shall submit its recommendations in writing to the secretary.

The problem with the health insurance regulation was that it was submitted less than twenty days before the August meeting and according to this regulation, no action could be taken on it. Then, due to subsequent events, there was no meeting in September or October and the regulation was sitting with no action being taken. The problem seems to be with the wording of the regulation and the fact that the Board only meets once a month. Mr. Sipek said that he and Secretary Crall have been discussing changes to the regulation to solve the problems that are occurring.

Ms. Hendricks moved to have the staff and the Personnel Cabinet present a draft to the Board at its next meeting. Ms. Gibson seconded and the motion carried 4-0.

There being no further business, Ms. Goodman moved to adjourn, Ms. Hendricks seconded, and the motion carried 4-0. (3:50 p.m.)

Greg Higgins, Chairman

Tina Goodman, Vice-Chairman

Bruce E. Middleton, Member

Betty Gibson, Member

Lisa Hendricks, Member

Rosemary Center, Member